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FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL 15L-27

DATE RECEIVED: July 24, 2015

DATE OF NOTIFICATION: July 27, 2015

DATE ACTIVATED: October 15, 2015

EARLIEST SOL: August 8, 2019

LATEST SOL: January 26, 2020

ELECTION CYCLE: 2014

SOURCE:

RAD REFERRAL

RESPONDENT:

Put Alaska First and Jim Lottsfeldt in his
official capacity as treasurer

RELEVANT STATUTES:

52 U.S.C. § 30104(b)(2)

11 C.F.R. § 104.1(a)

11 C.F.R. § 104.3(a)

11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Put Alaska First and Jim Lottsfeldt in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose receipts totaling \$440,000 on its original 2014 12-Day Pre-Primary Report.¹ The Committee acknowledges the violation but requests that the Commission take no further action and close the file because the undisclosed receipts involve a single transaction that

¹ Reports Analysis Division ("RAD") Referral of Put Alaska First, 15L-27 (July 24, 2015) ("Referral"), incorporated herein by reference.

1 was mistakenly omitted and independently corrected.² Based on the available information, we
2 recommend that the Commission open a matter under review ("MUR") and find reason to
3 believe that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by failing to
4 accurately disclose receipts. Additionally, we recommend that the Commission enter into pre-
5 probable cause conciliation with the Committee and approve the attached conciliation agreement.

6 II. FACTS

7
8 The Committee is an independent expenditure-only committee ("IEOC") that registered
9 with the Commission on May 2, 2013.³ On August 8, 2014, the Committee filed its original
10 2014 12-Day Pre-Primary Report covering the period from July 1, 2014, through July 30, 2014,
11 which disclosed \$667,500 in receipts.⁴ On January 26, 2015, the Committee filed an Amended
12 2014 12-Day Pre-Primary Report that disclosed \$1,107,500 in receipts, an increase of \$440,000,
13 or 65.9 percent greater than the original report.⁵

14 On March 29, 2015, RAD sent the Committee a Request for Additional Information
15 (RFAI) seeking clarification of the substantial increase in receipts disclosed on the Amended
16 2014 12-Day Pre-Primary Report.⁶

17 On April 28, 2015, the Committee filed a Miscellaneous Electronic Submission ("Form
18 99") in response to the RFAI explaining that the increase in receipts was due to a single

² Committee Resp. at 1-2.

³ See Statement of Organization (May 2, 2013), available at <http://docquery.fec.gov/pdf/303/13031064303/13031064303.pdf>.

⁴ See Committee 2014 12 Day Pre-Primary Report (Aug. 8, 2014), available at <http://docquery.fec.gov/pdf/413/14950002413/14950002413.pdf>.

⁵ See Committee Amended 2014 12 Day Pre-Primary Report (Jan. 26, 2015), available at <http://docquery.fec.gov/pdf/546/15970048546/15970048546.pdf>.

⁶ See Referral at 1-2.

1 contribution that was received on July 30, 2014, and was misclassified.⁷ The Committee claimed
2 that it initially believed it received the contribution after the Pre-Primary Report period, but later
3 determined that it received the contribution within that coverage period.⁸ The Committee stated
4 that it had put procedures into place to ensure that all future contributions will be disclosed
5 timely.⁹

6 On May 6, 2015, a RAD analyst called Jim Lottsfeldt, the Committee's treasurer, to
7 inform him that the increase in activity on the Amended 2014 12-Day Pre-Primary Report could
8 be referred for further Commission action.¹⁰ The RAD analyst also acknowledged receipt of the
9 Committee's response to the RFAI and advised that the Committee could file an additional Form
10 99 to further clarify the increased receipts.¹¹ During the conversation, Mr. Lottsfeldt repeated
11 the explanation in the Committee's RFAI response and stated that he would consult with the
12 Committee's counsel about supplementing the RFAI response, but no supplemental response was
13 received.¹²

7 See Referral at 2.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

1 RAD referred the Committee to OGC for failing to disclose receipts totaling \$440,000 on
2 its original 2014 12-Day Pre-Primary Report.¹³ OGC then notified the Committee of the
3 Referral.¹⁴

4 In response to the Referral, the Committee explains that the increased receipts arose from
5 one transaction, a \$440,000 contribution from another political committee that it received by
6 wire transfer near the end of the 2014 12-Day Pre-Primary Report coverage period, which the
7 Committee erroneously omitted from the report.¹⁵ The Committee explains that it initially
8 omitted the contribution because the Committee lacked a trained accountant with prior
9 experience in bank reconciliations, and because the Committee was very active in the final stages
10 of the election cycle.¹⁶ The Committee emphasizes that it identified the omitted receipts on its
11 own initiative when reconciling its books and amended the report.¹⁷ The Committee also asserts
12 that it is effectively defunct and seeks termination.¹⁸ The Committee further asserts that the
13 omission of the single receipt does not compel a reason to believe finding.¹⁹ The Committee

¹³ RAD referred the matter to OGC pursuant to the *2013-2014 RAD Review and Referral Procedures for Unauthorized Committees* at 74-75 (the "Referral Procedures"). See Cover Memo to Referral at 1. Standard 7 of those procedures includes referrals to OGC when an amendment or amendments are filed or more business days after the original report is filed and the increase or decrease in activity is more than and, for election sensitive reports, exceeds The increase in activity disclosed on the Committee's 2014 12-Day Pre-Primary Report meets the referral thresholds.

¹⁴ Letter from Jeff S. Jordan, Asst. Gen. Counsel, CELA, FEC to Jim Lottsfeldt, Treasurer for the Committee (July 27, 2015); see also *Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

¹⁵ Resp. at 1. The Committee's Amended 2014 12 Day Pre-Primary Report shows a \$440,000 contribution from Senate Majority PAC on July 30, 2014.

¹⁶ Resp. at 1.

¹⁷ *Id.*

¹⁸ *Id.* The Commission's records do not show that the Committee filed a Termination Report. The Committee's currently has \$149.50 cash on hand. See 2015 Mid-Year Report, available at, <http://docquery.fec.gov/pdf/262/201507279000428262/201507279000428262.pdf>.

¹⁹ Resp. at 2 (citing *Lovely v. FEC*, 307 F. Supp. 2d. 294, 300 (D. Mass. 2004)).

1 generally asserts that while it must disclose its total receipts, "its report is nonetheless considered
2 in compliance with the Act when the treasurer had used best efforts to obtain, maintain, and
3 submit the required information."²⁰ Finally, the Committee asserts that it should not be
4 penalized because it did not act in bad faith, any injury to the public is mitigated by the fact that
5 the donor of the \$440,000 was a federally-reporting political committee that had given on
6 multiple occasions to the Committee, it is defunct, and there is no need to vindicate the
7 Commission's authority here.²¹

8 III. LEGAL ANALYSIS

9 The Federal Election Campaign Act of 1971, as amended (the "Act") requires committee
10 treasurers to file reports of receipts and disbursements in accordance with the provisions of
11 52 U.S.C. § 30104.²² These reports must include, *inter alia*, the total amount of receipts.²³

12 Here, the Committee did not comply with the Act's reporting requirements when it failed
13 to disclose receipts totaling \$440,000 on its original 2014 12-Day Pre-Primary Report, an
14 election-sensitive report.²⁴

15 The Committee asserts that it should not be penalized for the single reporting error by
16 inexperienced personnel during a busy period of the election cycle because it independently
17 corrected the error, and it is defunct. The Committee also appears to assert that its actions

²⁰ *Id.* (citing 52 U.S.C. §§ 30104(b)(2), (i)).

²¹ *Id.* (citing *FEC v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989) and *FEC v. Friends of Jane Harman*, 59 F. Supp.2d 1046, 1058 (C.D. Cal 1999) (a court considers the respondent's good or bad faith, the injury to the public, the defendant's ability to pay, and the need to vindicate the Commission's authority when imposing a civil penalty)).

²² 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²³ 52 U.S.C. § 30104(b)(2); 11 C.F.R. § 104.3(a).

²⁴ Election-sensitive reports include pre-election reports for primary, general, and special elections. 11 C.F.R. § 111.43(d)(1).

1 comply with the Commission's best efforts regulations, stating generally that "its report is
2 nonetheless considered to be in compliance when the treasurer has used best efforts to obtain,
3 maintain, and submit the required information."²⁵

4 The Committee's best efforts argument is unpersuasive. It is not sufficient to generally
5 assert best efforts. The best efforts provision is an affirmative defense that a respondent must
6 establish.²⁶ In determining whether a committee has shown best efforts, the Commission
7 considers the affirmative steps taken to keep adequate records and make accurate reports, as well
8 as the reasons for the committee's failure to obtain, maintain, or submit the proper information.²⁷

9 The Committee has not provided any information to support its claim that it used best
10 efforts to submit an accurate original 2014 12-Day Pre-Primary Report — it merely states that it
11 did. To the extent the Committee is blaming the error on inexperienced staff during a busy
12 period, the Best Efforts Policy generally excludes inexperience, negligence, or error of
13 committee staff or agents as a valid defense.²⁸ Similarly, the fact that the Committee
14 independently discovered and corrected the error does not satisfy the best efforts standard.

15 Further, the Committee's other assertions are unavailing. The Committee is ultimately
16 responsible for filing accurate reports with the Commission. Its lack of bad faith is not germane
17 here as we are not recommending that the Commission make a knowing and willful finding. The

²⁵ Resp. at 2.

²⁶ See 52 U.S.C. § 30102(i) and 11 C.F.R. § 104.7(a) ("[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act."). See also, Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) ("Best Efforts Policy") (Commission does not consider best efforts defense unless a respondent asserts the facts that form the basis of that defense).

²⁷ Best Efforts Policy at 31,440.

²⁸ *Id.*

1 facts that the Committee is inactive and insolvent and that the donor committee separately
2 disclosed the \$440,000 contribution do not excuse the violation.

3 We therefore recommend that the Commission open a MUR and find reason to believe
4 that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a).

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4 **V. RECOMMENDATIONS**

5 1. Open a MUR.

6 2. Find reason to believe that Put Alaska First and Jim Lottsfeldt in his official
7 capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a).

8 3. Approve the attached Factual and Legal Analysis.

9 4. Enter into conciliation with Put Alaska First and Jim Lottsfeldt in his official
10 capacity as treasurer prior to a finding of probable cause to believe.

11 5. Approve the attached conciliation agreement.

12

6. Approve the appropriate letter.

Daniel A. Petalas
Acting General Counsel

12.14.15

Date

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